

THE HONORABLE ROBERT J. BRYAN

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

U.S. OIL TRADING LLC,

Plaintiff,

v.

M/V VIENNA EXPRESS, her tackle, boilers,
apparel, furniture, engines, appurtenances, etc.,
in rem, and M/V SOFIA EXPRESS, her tackle,
boilers, apparel, furniture, engines,
appurtenances, etc., *in rem*,

Defendants.

Hapag-Lloyd Aktiengesellschaft, *as claimant*
to the in rem defendant M/V VIENNA
EXPRESS,

Counter-Claimant and Third-Party Plaintiff,

-against-

U.S. OIL TRADING LLC,

Counter-Defendant and

O.W. BUNKER GERMANY GMBH, O.W.
BUNKER & TRADING A/S, ING BANK
N.V., CREDIT AGRICOLE CORPORATE
AND INVESTMENT BANK, a division or
arm of CREDIT AGRICOLE S.A.,

Third-Party Defendants.

IN ADMIRALTY

CASE NO.: 3:14-cv-05982-RJB

**ANSWER TO COUNTERCLAIM
AND THIRD-PARTY COMPLAINT
SEEKING INTERPLEADER
AND/OR DECLARATORY RELIEF**

Plaintiff and counter-defendant, U.S. Oil Trading LLC (“USOT”), by its undersigned attorneys, answering the Counterclaim for Interpleader and/or Declaratory Judgment ("Counterclaim") and, although the Third-Party Complaint for Interpleader and/or Declaratory Judgment of counter-claimant and third-party plaintiff Hapag-Lloyd Aktiengesellschaft (“HLAG” or “third-party plaintiff”), is not properly directed to USOT as plaintiff, USOT also answering the allegations of the Third-Party Complaint, states upon information and belief as follows:

1. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of the Counterclaim, except admits that on January 21, 2015, HLAG filed a Verified Statement of Interest and Notice of Restricted Appearance as claimant to the in rem defendant vessel M/V VIENNA EXPRESS.

2. Admits the allegations in paragraph 2 of the Counterclaim.

3. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 3 of the Counterclaim.

4. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 4 of the Counterclaim.

5. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 5 of the Counterclaim.

6. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 6 of the Counterclaim.

7. Denies each and every allegation in paragraph 7 of the Counterclaim, except admits that this Court has jurisdiction over this action pursuant to 28 U.S.C. §1333, and this action involves admiralty and maritime claims under Fed. R. Civ. P. 9(h), inasmuch as it involves claims for the payment of marine bunkers provided to the Vessel.

8. Denies each and every allegation in paragraph 8 of the Counterclaim.

9. Denies each and every allegation in paragraph 9 of the Counterclaim.

1 10. Denies each and every allegation in paragraph 10 of the Counterclaim, except
2 admits that this Court has personal jurisdiction over USOT.

3 11. Denies knowledge or information sufficient to form a belief as to the truth of
4 the allegations in paragraph 11 of the Counterclaim.

5 12. Denies knowledge or information sufficient to form a belief as to the truth of
6 the allegations in paragraph 12 of the Counterclaim.

7 13. Denies knowledge or information sufficient to form a belief as to the truth of
8 the allegations in paragraph 13 of the Counterclaim.

9 14. Denies knowledge or information sufficient to form a belief as to the truth of
10 the allegations in paragraph 14 of the Counterclaim.

11 15. Admits the allegations in paragraph 15 of the Counterclaim.

12 16. Denies knowledge or information sufficient to form a belief as to the truth of
13 the allegations in paragraph 16 of the Counterclaim.

14 17. Denies knowledge or information sufficient to form a belief as to the truth of
15 the allegations in paragraph 17 of the Counterclaim.

16 18. Denies knowledge or information sufficient to form a belief as to the truth of
17 the allegations in paragraph 18 of the Counterclaim.

18 19. Denies knowledge or information sufficient to for a belief as to the truth of the
19 allegations in paragraph 19 of the Counterclaim, except admits that HLAG, as claimant to the
20 in rem defendant Vessel, submitted an order for the supply of bunkers to the Vessel and that,
21 on October 18, 2014, USOT furnished bunkers to the M/V VIENNA EXPRESS as the port of
22 Tacoma, Washington.

23 20. Denies knowledge or information sufficient to form a belief as to the truth of
24 the allegations in paragraph 20 of the Counterclaim.

25 21. Denies knowledge or information sufficient to form a belief as to the truth of
26 the allegations in paragraph 21 of the Counterclaim, except admits that USOT claims that it

1 has a maritime lien against the M/V VIENNA EXPRESS for the furnishing of bunkers by
 2 USOT to that vessel on October 18, 2014, at the port of Tacoma, Washington, and has
 3 demanded payment therefor.

4 22. Denies knowledge or information sufficient to form a belief as to the truth of
 5 the allegations in paragraph 22 of the Counterclaim, except admits that United Kingdom
 6 Mutual Steamship Assurance Association (Europe) Limited, on its own behalf and as agents of
 7 HLAG, issued a Letter of Undertaking to USOT in the amount of \$1,725,000 in exchange for
 8 USOT's promise to refrain from arresting the M/V VIENNA EXPRESS.

9 23. Denies each and every allegation in paragraph 23 of the Counterclaim, except
 10 admits that on December 17, 2014, USOT filed a Verified Complaint against, inter alia, the
 11 M/V VIENNA EXPRESS to enforce USOT's maritime liens for unpaid invoice amounts for
 12 the delivery of bunker fuel at the Port of Tacoma, Washington and to secure USOT's maritime
 13 lien claims pursuant to Rule C of the Supplemental Rules for Admiralty or Maritime Claims
 14 and Asset Forfeiture Actions.

15 24. Denies each and every allegation in paragraph 24 of the Counterclaim.

16 AS TO THE FIRST CAUSE OF ACTION

17 25. In response to the allegations in paragraph 25 of the Counterclaim, USOT
 18 repeats and realleges each and every admission, denial and denial of knowledge or information
 19 sufficient to form a belief contained in paragraphs 1 through 24 herein with the same force and
 20 effect as if set forth at length.

21 26. Denies knowledge or information sufficient to form a belief as to the truth of
 22 the allegations contain in paragraph 26 of the Counterclaim, except admits that USOT was the
 23 physical supplier of bunkers to the M/V VIENNA EXPRESS at the port of Tacoma,
 24 Washington on October 18, 2014, and that USOT claims that it has a maritime lien against that
 25 vessel.
 26

1 27. Denies knowledge or information sufficient to form a belief as to the truth of
2 the allegations in paragraph 27 of the Counterclaim.

3 28. Denies knowledge or information sufficient to form a belief as to the truth of
4 the allegations in paragraph 28 of the Counterclaim.

5 29. Denies knowledge or information sufficient to form a belief as to the truth of
6 the allegations in paragraph 29 of the Counterclaim.

7 30. Denies each and every allegation in paragraph 30 of the Counterclaim.

8 31. Denies each and every allegation in paragraph 31 of the Counterclaim.

9 32. Denies each and every allegation in paragraph 32 of the Counterclaim.

10 33. Denies each and every allegation in paragraph 33 of the Counterclaim.

11 34. Denies each and every allegation in paragraph 34 of the Counterclaim.

12 AS TO THE SECOND CAUSE OF ACTION

13 35. In response to the allegations in paragraph 35 of the Counterclaim, USOT
14 repeats and realleges each and every admission, denial and denial of knowledge or information
15 sufficient to form a belief contained in paragraphs 1 through 34 herein with the same force and
16 effect as if set forth at length.

17 36. Denies each and every allegation in paragraph 36 of the Counterclaim.

18 37. Denies each and every allegation in paragraph 37 of the Counterclaim.

19 AS TO THE THIRD CAUSE OF ACTION

20 38. In response to the allegations in paragraph 38 of the Third-Party Complaint,
21 USOT repeats and realleges each and every admission, denial and denial of knowledge or
22 information sufficient to form a belief contained in paragraphs 1 through 37 herein with the
23 same force and effect as if set forth at length.

24 39. Denies each and every allegation in paragraph 39 of the Third-Party Complaint.

25 40. Denies each and every allegation in paragraph 40 of the Third-Party Complaint.

26 41. Denies each and every allegation in paragraph 41 of the Third-Party Complaint.

1 FURTHER ANSWERING THE COUNTERCLAIM, AND AS AND FOR
2 SEPARATE, PARTIAL AND/OR COMPLETE DEFENSES THERETO, USOT ALLEGES
3 UPON INFORMATION AND BELIEF AS FOLLOWS:

4 42. USOT repeats and realleges each and every admission, denial and denial of
5 knowledge or information sufficient to form a belief contained in paragraphs 1 through 41
6 herein with the same force and effect as if set forth at length.

7 FIRST AFFIRMATIVE DEFENSE

8 43. The Court lacks subject matter jurisdiction under 28 U.S.C. §1335 and 28
9 U.S.C. §1367.

10 SECOND AFFIRMATIVE DEFENSE

11 44. Each cause of action alleged in the Counterclaim fails to state a claim upon
12 which relief may be granted.

13 THIRD AFFIRMATIVE DEFENSE

14 45. Plaintiff's claims are governed by English law and/or German law and/or other
15 foreign law.

16 FOURTH AFFIRMATIVE DEFENSE

17 46. Plaintiff's claims are subject to London arbitration and/or German arbitration
18 under the applicable contract, if any, and defendant USOT reserves all rights and defenses in
19 respect thereto

20 FIFTH AFFIRMATIVE DEFENSE

21 47. There is no privity of contract between third-party plaintiff and USOT.

22 SIXTH AFFIRMATIVE DEFENSE

23 48. Third-party plaintiff has failed to satisfy all conditions precedent to file this
24 Counterclaim and Third-Party Complaint.

25 SEVENTH AFFIRMATIVE DEFENSE

26 49. Third-party plaintiff has waived any right to recovery against USOT.

EIGHTH AFFIRMATIVE DEFENSE

50. The Third-Party Complaint is barred by the doctrine of res judicata.

NINTH AFFIRMATIVE DEFENSE

51. The Third-Party Complaint is barred by the doctrine of estoppel.

TENTH AFFIRMATIVE DEFENSE

52. Third-party plaintiff's claims are barred, in whole or in part, by the doctrine of unclean hands.

ELEVENTH AFFIRMATIVE DEFENSE

53. Third-party plaintiff is not the real party in interest.

TWELFTH AFFIRMATIVE DEFENSE

54. Third-party plaintiff has failed to mitigate the damages alleged herein.

THIRTEENTH AFFIRMATIVE DEFENSE

55. If third-party plaintiff suffered any loss, which is denied, such loss resulted solely from the fault of third-party plaintiff and/or others for whom USOT is not responsible, and not as a result of any fault of USOT.

FOURTEENTH AFFIRMATIVE DEFENSE

56. Third-party plaintiff seeks attorneys' fees and costs which are not recoverable as damages herein.

FIFTEENTH AFFIRMATIVE DEFENSE

57. Third-party plaintiff's claims are barred in whole or in part for lack of consideration.

SIXTEENTH AFFIRMATIVE DEFENSE

58. By filing the Third-Party Complaint in respect of the M/V VIENNA EXPRESS, third-party plaintiff is seeking relief from this Court which has already been expressly denied by the United States District Court for the Southern District of New York.

1 WHEREFORE, USOT demands judgment dismissing the Counterclaim and granting
2 USOT its costs and disbursements of this action, and granting such other and further relief as
3 the Court deems just and proper.

4 DATED this 4th day of March, 2015.

5 NICOLL BLACK & FEIG PLLC

6
7 /s/ Christopher W. Nicoll

8 Christopher W. Nicoll, WSBA No. 20771

9 Jeremy B. Jones, WSBA No. 44138

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CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, I electronically filed the foregoing with the Clerk of the Court using the CM/CF system which will send notification of such filing to the following:

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DATED this 4th day of March, 2015.

/s/ Christopher W. Nicoll
Christopher W. Nicoll, WSBA #20771